

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

**IN THE MATTER OF
LIFELINE AND LINK-UP**

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WC Docket No. 03-109

**IN THE MATTER OF
SPRINT SPECTRUM, L.P. PETITION
FOR DECLARATORY RULING**

WC Docket No. 07-138

**REPLY COMMENTS OF THE PUBLIC UTILITY COMMISSION
OF TEXAS TO PETITION FOR DECLARATORY RULING**

The Public Utility Commission of Texas (“PUCT”) supports the right of state utility commissions to impose additional requirements on telecommunications carriers seeking to receive universal service subsidies. However, unlike the Kansas Corporation Commission (“KCC”), the PUCT has enacted two separate designation rules for federal and state eligibility and seeks to distinguish its rules from the KCC rule being challenged in this proceeding by Sprint. The PUCT’s rules for designating eligible telecommunications carriers (“ETCs”), eligible telecommunications providers (“ETPs”) and for determining Lifeline eligibility are fully compliant with federal law and Texas law. The PUCT’s rules do not burden or rely on federal universal service mechanisms. The PUCT seeks to insure that the Federal Communication Commission’s (“FCC”) ruling in this case is narrowly

tailored to address the KCC's rules and is not a broad ruling that could be read to address or otherwise implicate the rules of the PUCT.

State commissions such as the PUCT and the KCC have primary responsibility for designating ETCs, which results in telecommunications providers being eligible for federal universal service subsidies.¹ State commissions are permitted to adopt regulations that are not inconsistent with federal rules and regulations that include additional ETC definitions and standards, so long as such definitions or standards do not burden or rely on Federal universal service support mechanisms.² Furthermore, although the FCC has encouraged states to adopt the FCC's standards for ETC designation, it has not mandated that states do so.³ Instead, the FCC has generally affirmed that states have the discretion to impose additional eligibility requirements on carriers seeking ETC designations.⁴ Accordingly, and consistent with Texas statutes, the PUCT established rules and procedures whereby telecommunications carriers may apply for and may be designated as eligible to receive federal or state, or federal and state universal service subsidies.⁵

¹47 U.S.C. 214(e)(2); *In re. Fed.-State Joint Bd. On Universal Serv.*, 20 F.C.C. Rcd. 6371, 6374 (Mar. 17, 2005) ("2005 Universal Service Order").

² 47 U.S.C. 254(f).

³ *2005 Universal Service Order* at 6372.

⁴ *WWC Holding, Co., Inc. v. Sopkin*, 488 F.3d 1262, 1272-3 (10th Cir. Colo. June 5, 2007).

⁵ P.U.C. SUBST. R. 26.417; P.U.C. SUBST. R. 26.418; P.U.C. SUBST. R. 26.419.

The PUCT adopted a new Lifeline rule in April 2007.⁶ Similar to the KCC, the PUCT's new Lifeline rule gives Lifeline customers choices of service.⁷ The PUCT believes its new Lifeline rule is well within its jurisdiction. The PUCT believes that providing Lifeline customers choices of telecommunications services furthers the principles of universal service as enunciated in 47 U.S.C. 254(b) by providing access to advanced telecommunications services and information services to low-income consumers. Further, the PUCT believes there is no conflict between its Lifeline rule and 47 C.F.R. 504(b) because 47 C.F.R. 504(b) was never intended to limit the choices of a Lifeline customer. Instead it was intended to insure that Lifeline support was passed through directly to consumers to reduce their total amount due,⁸ and as the California Public Utilities Commission noted in its Initial Comments in this proceeding, to prevent double recovery by carriers.⁹ Lastly, the PUCT believes that providing Lifeline customers a choice of services does not rely on nor burden federal universal support mechanisms because neither the federal Lifeline support amount or the number of Lifeline eligible customers varies, regardless of the

⁶ P.U.C. SUBST. R. 26.412.

⁷ P.U.C. SUBST. R. 26.412(e)(6) & (7).

⁸ *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, 12 FCC Rcd 876, ¶ 366-368.

⁹ *In the Matter of Sprint Spectrum, L.P. Petition for Declaratory Ruling*, WC Docket No. 07-138, DA 07-2978 (pending) Comments of the California Public Utilities Commission and the People of the State of California (Aug. 9, 2007) at 5.

ancillary or bundled packages of service to which the Lifeline customer subscribes.

However, unlike the KCC, the PUCT's federal and state eligibility designation rules are separate rules. In addition to ETC designation, the PUCT designates ETPs, which allows telecommunications providers to be eligible for Texas universal service subsidies.¹⁰ The PUCT's ETP rule incorporates the FCC's Lifeline requirements and pursuant to state law also incorporates the PUCT's Lifeline requirements, wherein the PUCT provides additional requirements for ETP designation, including the requirements to make ancillary services and bundled packages available to Lifeline customers.¹¹

The PUCT believes that its Lifeline, ETP, and ETC rules are consistent with Texas law, federal law and the FCC's regulations. Therefore, if the Commission decides that the KCC's Lifeline rule or its ETP designation rule violate or are inconsistent with federal law, the PUCT respectfully requests that the Commission refrain from issuing a ruling that would conflict with or potentially invalidate the Texas statute and/or the PUCT's rules.

Respectfully submitted,

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¹⁰ P.U.C. SUBST. R. 26.417.

¹¹ P.U.C. SUBST. R. 26.417(c)(1)(E).

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